IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 202 OF 1994

Narayan Jagannath Suryawanshi ... Appellant.

Vs.

The State of Maharashtra ... Respondent

Mr. Chari with Mr. Unnikrishnan for appellant.
Mr. A. S. Shitole A. P. P. for respondent

CORAM : **A. S. AGUIAR J.**

Date : August 5, 2004

ORAL JUDGMENT:

1. This appeal is from the Judgment and order dated 15.2.1994 passed by the Special Judge, Greater Bombay, under the Prevention of Corruption Act, whereby the appellant has been

convicted for the offence under section 161 of IPC., equivalent to section 7 of the Prevention of Corruption Act and section 5(2) of the Prevention of Corruption Act, 1947 equivalent to section 13(1)(d) and 13(2) of the Prevention of Corruption Act. By the said order the accused is sentenced to suffer S.I. for one year and to pay a fine of Rs.1000/- and in default of payment of fine to undergo S.I. for three months on both the counts. Both the sentences are directed to run concurrently.

2. The appellant /accused, a public servant, is alleged to have demanded and accepted bribe some time in the year 1987-88 as a reward and / or by way of illegal gratification for an official act. The appellant / accused was an employee with the BEST Undertaking as a fore-man in the lubrication section of the Engineering Department of BEST. The complainant PW. 1 Mukesh Bhalaria is the sole proprietor of Messrs D. R. Traders, supplying electrical goods, chemicals, oil proof papers to various Government and semi Government concerns, including BEST. On the date of the offence P. W. 6 Sharad Ganesh Date,

was the immediate superior of the accused, being the Assistant Engineer (General), in the Lubrication section, Transportation and Engineering Department of the BEST. The said Sharad was serving in the said post from June 1983. In all there were fifteen members of the staff working under him, consisting of one General Foreman, two shop recorders, two laboratory assistants, one greaser, two shunters and six cleaners.

3. Whenever the BEST is in need of material it purchases the same after issue of tenders. The suppliers file their tenders in the requisite forms with the sample of the material with the Stores Department, which in turn sends the said sample to the Lubrication section for testing the quality of the material. After carrying out the necessary tests the said section sends its report to the Inspection department. On receipt of the report the Inspection Department forwards its report based on the communication received about the feasibility to otherwise of the sample to the Tender Committee for accepting or rejecting the tenders. In the event of the acceptance of the tenders the

Stores Department places the order with the person whose tender had been accepted for supplying the material. The supplier thereafter would supply the material in bulk as ordered. The Stores Department after receipt of the material in bulk quantity in turn would inform the Inspection Department which in turn sends a memo to the laboratory for test. The Laboratory Assistant then visits the Stores Department and collects the samples which are again tested to ascertain that the bulk supplies are as per the specifications. If the samples are as per specifications an endorsement okaying the said sample will be made on the inspection memo and a tick mark would be made on the inspection memo against the column ' aceptable in full' . The Inspection Department on receipt of the endorsement would prepare a separate letter and, inform the Stores Department that the material is accepted in full. In the event of the sample from the bulk supplies being found not according to the specifications, tick mark would be put against the column 'rejected in full' and would be forwarded to the Inspection Department, which would send a letter to the tenderer

mentioning that the sample was rejected and the reasons therefor. Thereafter the supplier would either replace the rejected material with fresh supplies or get a request from the Stores Department to get the material retested. Where the material is replaced with fresh supplies the same procedure a stated above would have to be undergone, viz., intimation from the Stores Department to the laboratory for carrying out the test, the laboratory deputing an assistant to collect the sample, getting the sample examined, communicating its result to the Inspection Department etc. Where the material was directed to be retested the Stores Department had to request the Inspection Department to get the material retested, which in turn would ask the Laboratory to retest the material and communicate its result to the Inspection Department.

4. After receipt of the supplies a cheque for the bulk supplies would be handed over to the party concerned as per the conditions of the tender. The supplies will be physically checked and if found to tally with the numbers mentioned in the

delivery challan the Stores Received Note (SRN) would be sent to the party concerned. If any shortage is found the party would be informed accordingly to make good the short supply.

5. In the present case the material supplied is oil proof paper sheets used for automobiles. A tender was floated on 10.3.87 for the supply of 6400 oil proof paper sheets. M/s. D.R. Traders of which the complainant is the sole proprietor submitted, the tender forms along with two samples to the Stores. The tender was accepted and order (exhibit 18) was placed on 27.5.1987 for supply of 1500 sheets of oil proof paper sheets. Accordingly M/s. D.R. Traders supplied 1500 sheets through the delivery challan (exhibit 19). However, by letter dated 31.8.87 (exhibit 20) the Stores Department of the BEST informed M/s. D.R. Traders that the material was rejected for the reasons set out therein. M/s. D.R. Traders challenged the said rejection report through its letter dated 7.9.87 (exhibit 21), contending that the material supplied was of the same brand and quality which was approved by the BEST while accepting

the tender. By letter dated 26.10.1987 (exhibit 22), the Assistant Controller of Stores, informed M/s. D.R. Traders that the material was retested and it failed in breaking strength and was not as per the sample approved. Thereafter the complainant P.W. 1 met one Mr. Khilnani of the Stores Receiving Department at Wadala who was known to the complainant. As advised by Mr. Khilnani the complainant sometime in November 1987 visited the Oil Testing Laboratory at Wadala and met the accused who told him that he was Mr. Suryawanshi and in charge of the testing laboratory. The accused Mr. Suryawanshi told the complainant to bring two fresh samples. Accordingly on 25.11.87 the complainant gave two more samples of oil proof paper sheets along with covering letter dated 25.11.1987 (exhibit 23) addressed to the Assistant Engineer (General) requesting that the samples be tested so as to enable him to replace the rejected bulk supply. After looking at the samples the accused told the complainant that he would pass the samples. On the same day i.e. on 25.11.87 the accused visited M/s. D.R. Traders and told the complainant that

if he paid Rs.500/- he would okay the two fresh samples and also pass the material that would be replaced. After some discussions he agreed to reduce the amount to Rs.150/- which the complainant handed over to the accused. Thereafter fresh samples were approved and the complainant replaced the rejected material with fresh stocks. It may be noted here that according to the complainant the rejected bulk quantity as well as fresh supplies were of one and the same quality and as per the specifications of the BEST.

6. On 12.1.1988 the BEST floated another tender for supply of 11000 sheets of oil proof paper. The complainant submitted his tender along with the requisite samples. It appears that the tender was opened on the same day. About fifteen to twenty days thereafter the accused telephoned the complainant and told him that if he paid Rs.5000/- he would pass the samples. The complainant refused to make any payment. The accused threatened the complainant on phone that he would reject the samples if he did not pay him Rs.5000/-. Thereupon the

complainant told the accused that he should first pass the samples and only then he would concede to his demand.

7. Sometime in the first week of February, 1988, the accused visited the office of M/s. D.R. Traders and informed the complainant that he had passed the two samples and that he should pay him Rs.5000/-. Thereupon the complainant told him that unless he obtained the purchase order from the BEST he would not pay him the money. On 26.3.88 the complainant received a letter dated 22.3.88 (Exhibit 26) from the Superintendent of Stores and Purchase informing him that his tender was accepted and that BEST has placed the advance payment purchase order Exhibit 27 dated 15.4.1988 with M/s. D.R. Traders for the supply of 11000 sheets of oil proof paper vide delivery challan exhibit 28 dated 27.4.1988. On 20.4.88, the date on which the order exhibit 27 was received, the accused visited the office of M/s. D.R. Traders and met the complainant and demanded Rs.5000/-. However, the complainant told him that the amount was excessive. After

some bargaining the amount was scaled down to Rs.1500/-. The complainant told the accused that he would pay the amount only after he received the cheque of Rs.48,400/- for the supply of the said material. When the bulk supplied was checked it was found to be short of 75 sheets this was made good by the supplier on 2.5.1988, through delivery challan exhibit 29. Two-three days thereafter the complainant received the cheque for Rs.48,400/- from the BEST. The accused telephoned the complainant and informed that he had passed the material and would come to collect the amount

of Rs.1500/-. However, the complainant told the accused that he did not have the money and that the accused should come after 15 to 20 days. On 24.5.1988 the accused telephoned the complainant but the complainant told him that he did not have money on that day and he should contact him on phone on 27.5.1988. Accordingly on 27.5.1988 at about 12 noon the accused again telephoned at the office of M/s. D.R. Traders

when Miss Bhargavi Vaidhya, the Secretary of the complainant, told him that the complainant was not in the office and that he should phone later on at about 4 p.m. Accordingly at about 4 p.m. on the same day the accused again telephoned the complainant and told him that he would come to the office to collect Rs.1500/-. The complainant asked him to reconsider the demand. The accused refused to do so. Hence the complainant told the accused to come on the next day i.e. on 28.5.88 between 4.30 to 5 p.m. to collect the amount of Rs.1500/-. At about 1 p.m. , on 27.5.1988 the complainant went to the ACB office and lodged his complaint (exhibit 30) with P. I. Arthur which was registered at Crime No. 14/88 and the complainant was directed to visit the ACB office again on 28.5.1988 at about 2.00 p.m. for laying the trap.

8. On 28.5.1988 P.I. Arthur called for panchas and made all the necessary arrangements for laying a trap. He also gave necessary instructions to the complainant and the panchas. The use and effects of anthracene powder was demonstrated to the

panchas. All the aforesaid facts pertaining to the trap were recorded in the pre-trap panchanama, exhibit 36. Pursuant thereto the complainant and the raiding party with the panchas first went to the office of the complainant at about 3.50 p.m. Only the complainant P.W. 1 Mukesh Bhalaria and panch P.W. 2 Majgaonkar went to the office of M/s. D.R. Traders. Rest of the raiding party stationed themselves near the Harkisandas Hospital. At about 4.40 p.m. the accused came on the 2nd floor of the building and took a round and went down and waited at the entrance of the building for about 15-20 minutes. At about 5 p.m. he came to the 2nd floor and entered the office of M/s. D.R. Traders and occupied the seat in front of the complainant. Thereafter the following conversation took place between the complainant and the accused:

" Complainant – KYA SAAB KITNA TIME LAGAYA

accused – AISA HI THODA TIME LAG GAYA

complainant – AP BAHAR GAVSE KABHI AYE

accused – PANDHRA DIN BAHAR GAV GAYA THA, APKO MANGALVARKO PHONE KIYA, TABHI AYA NICHE

CHALENGE.

Complainant - MAI STATUS CHHODKE NAHI ATA HUN (Looking at the Panch) Kyo Majgaonkar AAB, BARABAR HAI NA.

Panch – HA, HA THIK HAI

Complainant : TOTAL ORDER KA VALUE Rs. 48,400/- HAI APNE KITNA DEMAND KIYA THA.

Accused : Rs.1500/-

(At this stage complainant takes out his calculator and calculate and said “FORTY EIGHT THOUSAND FOUR HUNDRED – Ka TIN PERCENT 1452/- HOTA HAI.

Accused : PACHAS RUPAYE ME KYA RAKHA HAI, PANDHARA SO RUPAYE DEDO.”

9. The complainant then took out the wad of currency notes with his right hand from his chest pocket of his bush shirt and extended his right hand towards the accused across the table saying in Hindi “Ginke Lelo”. The accused accepted the wad of the currency notes in his right hand and transferred it to his left

hand. He then took out his handkerchief from his pant pocket and put it on the wad which was in his left hand. The complainant then got up under the pretext of ordering coffee and gave the pre-arranged signal. Immediately thereupon the raiding party came to the office. The accused was apprehended by two police constables who caught hold of both his hands. Thereafter the accused dropped the wad of currency notes and the handkerchief on to the floor. The raiding party carried out the necessary tests. An ultra violet lamp was brought in and the hands and clothes of the accused were examined. Bluish glow was seen on the tips of all the fingers of his right hand and also on all the phalanges of all the fingers, thumb, on the palm of his left hand, on the tip of the nose, mustaches, both eye-brows and on the front portion of the neck of the accused. All the aforesaid facts were recorded in the post-trap panchanama (exhibit 37), which concluded at about 7.15 p.m. After recording the statement of the witnesses including that of the complainant and obtaining sanction (exhibit 44) to prosecute the accused from the competent authority, i.e. the General Manager of the BEST

charge sheet came to be filed in the Court of the Special Judge for offence under Section 161 I.P.C. and 5(2) read with 5(1)(d) of the Prevention of Corruption Act, 1947.

10. In the course of the trial, the charge at Exhibit 6 was framed. Distinctive charge was framed for the demand of Rs.500/- and acceptance of Rs.150/- on 25.11.87, the demand of Rs.5000/- in the third week of January 1988, the demand of Rs.5000/- in February 1988, the demand of Rs.5000/- in April 1988 and after negotiations showing willingness to accept Rs.1500/-, the demand of Rs.1500/- on first or second of May 1988, the demand of Rs.1500/- on 24.5.1988, the demand of Rs.1500/- on 27.5.1988 and the demand and acceptance of Rs.1500/- on 28.5.1988. All the aforesaid acts being offences punishable under Section 161 of the IPC, distinctive charges were framed in respect of each act. An additional charge for the offence of criminal misconduct on 25.11.87 within the meaning of section 5 (1)(d) in which the accused is alleged to have obtained for himself an amount of Rs.150/-, a pecuniary advantage, by

corrupt or illegal means or by otherwise abusing his position as a public servant, an offence punishable under Section 5(2) of the Prevention of Corruption Act 1947 was also framed. So also, a distinct charge has been framed for committing the offence of criminal misconduct within the meaning of section 5 (1)(d) as the accused is alleged to have obtained for himself a sum of Rs.1500/- on 28.5.1988 from the complainant by corrupt or illegal mens or otherwise abusing his position as public servant, an offence punishable under Section 5(2) of the Prevention of Corruption Act, 1947. The charges were explained to the accused who denied his guilt and claimed to be tried. The accused in his 313 statement admitted that during the relevant period he was serving as a foreman in the lubrication section of Engineering Department at Dadar Workshop and therefore a public servant. He also admits that as a Foreman he was exclusively entrusted with the testing of Oil Proof paper , lubricants, liquid soaps, detergents and tarpaulin. He has no knowledge about the ownership of M/s. D.R. Traders. He claims that for the first time he came to know

about the office of M/s. D.R. Traders on 28.5.1988 after the trap. He has no knowledge about the acceptance of the tender of M/s. D.R. Traders, for the supply of the oil proof papers. He states that he had tested the samples from out of the supplies of oil proof papers, but he had no knowledge if the said sample was from out of the material supplied by M/s. D.R. Traders. He has no knowledge regarding communication between M/s. D.R. Traders and the Stores Department relating to the rejection of the material and subsequent supplies.

11. It is the defence of the accused that the complainant P.W. 1 Mukesh Bhalaria attempted to plant the amount in his person as set out by him in answer to question no. 114 in his statement under Section 313 Cr. P. C.

12. In support of its case the prosecution has in all examined 6 witnesses. The complainant P.W. 1 Mukesh Bhalaria is the sole proprietor of M/s. D.R. Traders. The entire prosecution case is based on his testimony and FIR (exhibit 30). P.W.

____P.I. Arthur is the Investigating Officer who carried out the investigation and also made necessary arrangements for the trap and drew pre-trap panchanama and post trap panchanama. P.W. 2 Majgaonkar is the panch to the alleged incident of demand and acceptance of the bribe amount on the day of the trap in the office of M/s. D.R. Traders while PW 3 Miss Bhargavi Vaidya is the employee of the complainant who has also testified to the visit of the accused and that the accused had telephoned the office of the M/s. D.R. Traders on 27.5.88 as well as the visit of the accused to the said office and demand and acceptance of bribe amount of RS.1500/- in the office of M/s. D.R. Traders.

13. The learned Special Judge relying on the testimony of the complainant which have been corroborated by that of the panch P.W. 2 as well as by Miss Vaidya, an employee of the complainant has accordingly convicted the accused of the said offences with which he was charged.

14.The accused has challenged his conviction and has denied his guilt and claims that he has been falsely implicated by the complainant. Learned advocate Mr. Chari, arguing on behalf of the accused has submitted that the conviction could not have been based on the sole testimony of the complainant as his testimony has to be read as that of an accomplice and therefore require corroboration as held by the Supreme Court in the case of *Pannalal Damodar Rathi vs. State* reported in AIR 1979 S.C. 1191.

15.It is contended that certain specific features of the complainant' s evidence are lacking in corroboration and therefore the complainant's story does not make out a water tight case against the accused. It is pointed out by Ld. advocate for the accused that the complainant is not a newcomer to the BEST as he has been supplying various items in the past. Admittedly there were no officers in the BEST who were adverse to him or to his interest and further he had no reason to doubt the integrity of the Assistant Engineer (General), or the

Deputy Chief Engineer (Transport) within whose jurisdiction the supply of oil proof papers would fall and that since the appellant / accused was only employed as a foreman in the Engineering Department of BEST and was not even an officer he was not in a position to make demands for bribe or for passing the samples or accepting the bulk supplies or rejecting the same. In fact had such demands been made by the accused there is no reason why the complainant did not approach any higher officer and apprise him of the demand for bribe or of the acceptance of Rs.150/- or of the continued demand of Rs.1500/- as bribe. It is pointed out that though the complainant went to one Mr. Jadhav of Stores Department and complained that his materials were unjustly rejected he did not complain about the demands made by the accused, though he knew that Assistant Engineer (General) was in charge of the testing laboratory nor did he complain to the Deputy Chief Engineer (Transport). In fact the complainant did not tell anyone about the bribe till lodging of the complaint with ACB on 27.5.1988. It is therefore the contention of the learned advocate

for the accused that the testimony of the complainant is inherently weak and by itself is not sufficient to convict the accused without corroboration.

16. Further it is pointed out that the demand for Rs.5,000/- later scaled down to Rs.1,500/- was made after the 2nd tender was accepted and sample passed and the bulk supplies accepted and passed and money paid. It was only thereafter that the accused made his demand for of Rs.5000/-. It is pointed out that in the normal course when the bulk supplies were approved and accepted the tenderer would normally get the Stores Receipt Note (SRN) and that was the indicator of the acceptance of the material and that unless the said SRN was received the tenderer would not know whether the bulk supply was approved or not. However, in this case the complainant did not enquire with the Stores Department if it had issued the SRN and in fact the complainant admits that the SRN of 11000 sheets was not sent to him by the BEST. It is thus contended that there is a serious doubt as to the genuineness of the complaint in view of

the fact that the complainant has alleged that the demand was made after payment for the bulk supplies was made to the complainant.

17.The story of the complainant is doubted in view of the following: The complainant claims that since the sample submitted by him was not found acceptable he contacted one Khilnani who was in charge of the stores Department. The said Khilnani advised him to visit the oil testing laboratory. It is pointed out that the prosecution has not led any evidence to establish as to who this Khilnani is and whether he was in fact an employee of BEST. Although the prosecution has examined the General Manager BEST P.W. 4 Mr. Mitbandar, and the Assistant Engineer (General) Shri Date (PW 6) they are silent as to the existence of Mr. Khilnani. It is contended that if in fact the said Khilnani had advised the complainant to visit the oil testing laboratory then the said Khilnani ought to have been examined to establish this fact especially in view of the policy of the BEST which discourages disgruntled suppliers from visiting the laboratory as

has been testified by the P.W. 4 General Manager of the BEST. According to the defence the complainant's story of his visit to the oil testing laboratory cannot be accepted on its own without corroboration.

18.I am afraid I cannot agree with the submissions made by the learned advocate for the appellant /accused. In relation to the demand and acceptance of Rs.150/- at the time of the first tender in respect of oil proof paper sheets and of the demand of Rs.5000/- which was scaled down to Rs.1500/- the prosecution has examined P.W. 6 Date who was Assistant Engineer of Lubrication section of Transportation and Engineering Department, at the relevant time. Shri Date has set out the various steps and the procedure which has to be undergone from the moment of floating of the tender to acceptance of the sample, getting it tested and passed or rejected and finally getting the bulk supplies delivered and again tested before the payment is made. From the procedure set out by P.W. 6 it is clear that the accused who was a foreman in the Stores

Department, Lubrication Section, Transportation and Engineering Department, played a vital role in the acceptance and / or rejection of the samples as well as of the bulk supplies. Although there were other officers under whom he was functioning nevertheless the approval of the higher officers was obtained by the accused as a matter of course. It was therefore the accused whom the complainant was required to meet to ensure that the samples were passed and not rejected as also the bulk supplies accepted. Unless the accused took steps to get the samples tested and passed as also the bulk supplies passed no payments could have been made to the complainant. The non- examination of the said Mr. Khilnani cannot be fatal to the prosecution case as the complainant could have been advised by anyone else not necessarily Mr. Khilanani to go to the oil testing laboratory directly. It is, therefore, not essential to have examined Khilnani to prove the fact that the complainant in fact visited the oil testing Department. The important aspect of the matter is that the complainant has established that the accused was crucial for the purpose of getting the samples and

supplies passed and accepted. It is undisputed that the complainant has been dealing with the department for quite some time prior to the incident in question. The accused also admittedly was working in the oil testing section at the relevant time as well as for some time prior to the incident in question. Therefore, although it may be a matter of doubt as to how the complainant came to know the accused it cannot be gainsaid that the complainant did in fact meet the accused.

19. The contention of the learned advocate for the accused that the complainant did not make any complaint about the illegal demands made by the accused to his higher officers nor inform anyone else of the same till the lodging of the complaint with the ACB, can in no way be said to weaken the prosecution case. The complainant was interested in getting his tenders accepted, getting his bulk supplies accepted and getting paid for the material supplied by him. The accused though a minion in the oil testing laboratory, nevertheless could cause the sample and th bulk supplies to be rejected, by a simple letter stating that the

samples or the materials were not as per specifications. The business which the complainant had with this department of the BEST was not of such large quantity as to fetch huge profits. Therefore the higher officers need not have been consulted in the matter of acceptance of the tender. It was in the interest of the complainant not to take the matter up with the higher officers as his work could be done at a lower level incurring less expenses. Therefore, it is not surprising that though the accused complained that his samples were being unfairly rejected made no complaint of any demand of bribe by the accused.

20. The complainant P.W. 1 Bhaleria in his cross – examination categorically stated that he did not complain to the superior officers that the accused was demanding bribe because he thought it better to lodge the complaint with the ACB and that about 10 to 12 days prior to the complaint he had made up his mind to report the matter to the ACB, in case the accused insisted on the bribe. Further, he explained that he was in two

minds whether to report the matter to the ACB or not because he apprehended that a report to the ACB would affect his business.

21. Learned advocate for the appellant had also made much of the fact that the complainant did not enquire with the Stores Department if the SRN in respect of his supplies with the BEST was issued or not. It is pointed out that normally the complainant would not know whether his bulk supplies have been approved or not unless he got the SRN. In the present case the accused did not enquire with the department if the SRN was issued. In fact it is admitted that the SRN for 11000 sheets was not send to him by the BEST. It is suggested by the learned advocate for the accused that the failure of the complainant to enquire with the Stores Department whether the SRN was issued or not makes the prosecution story of the stepped up demand of Rs.5000/- doubtful.

22. In this connection it would be useful to refer to the evidence of

the complainant who in his cross – examination has stated in para 36 "Between Jan 1988 to 27/5/88 I was avoiding to pay any money to the accused because I did not want to pay him and because there was no need to pay him. In the first week of May 1988 the accused had informed me that the bulk supplies of 11000 sheets were approved. I did not get the official intimation that the bulk supplied were accepted and I had learned about it orally through the accused". To the question put to him in cross examination whether he had received calls from Mr. Khilnani about the receipt of the material and the cheque being ready and acceptance of the material, the complainant has answered as follows.

> "As per the terms of contract the moment goods were delivered the cheque used to be issued and therefore before the goods were delivered I used to get telephone calls that the cheque was ready. Thereafter I used to sent material and collect the cheque. The collecting of the cheque was not the guaranty of approval

of the goods, because the department could reject and ask me to supply the fresh material by collecting the rejected material. In case I was not in a position to replace the material I was required to return that amount collected by way of cheque. After the materials were approved or accepted I used to get stores receipt note (shortly known was SRN) . The receipt of the SRN was the indicator of the acceptance of the material. Because of the mutual relations at times even if the cheque was not ready the material would be supplied. When the accused told me that the bulk quantity was approved I did not believe him because unless I got the SRN in my hand I could not have said that the bulk quantity was approved. ..... The Stores department after getting the report of the oil testing laboratory issues the SRN".

23.The SRN (exhibit 34) shows the date of supply as 3.4.91, the date on which the SRN was signed as 11.4.91 and the date of SRN as 10/4/91. In cross examination the complainant has stated that since he had already received the payment he did not enquire with the BEST whether the 11000 sheets supply was approved or not.

24.Thus it is seen that the receipt of the SRN was not a sine qua non for the complainant to have supplied the bulk material, especially in view of the fact that the payment had already been received in the normal course, which was always subject to the supply being approved and if the supply was found deficient the complainant had to make good the shortage or deficiency as the BEST could recover the charges paid to the complainant for the defective goods supplied.

25.In the present case the SRN was required to be enclosed while submitting the bills. The complainant got payment against

delivery of the goods without following the said procedure. The relevant purchase orders which are exhibits s18 and 26 are dated 25.5.87. These orders are styled as advance payment purchase orders and it is specifically stated that 100% payment would be made against delivery.

26.It is thus seen that the subsequent stepped up demands of Rs.5000/- which was scaled down to Rs.1500/- was in view of the order placed for the bulk supply, numbering 11000. The earlier order was of a smaller quantity and the bribe demanded and paid was only Rs.150/-. In view of the order for 11000 sheets having been placed for which the payment was to the tune of Rs.48,400 the bribe was sought to be collected pro rata. Even this was reduced after much discussion and bargaining.

27. No doubt evidence in respect of demand and payment of Rs.150/- made earlier and the subsequent demand for Rs.5000/- and payment of Rs.1500/- made in connection with the subsequent supply of 11,000 sheets of oil papers as bribe is

based on the bare words of the complainant. There is no corroboration to the same. In the nature of things there cannot be any corroboration to the testimony of the complainant on the demand and acceptance of Rs.150/- on the earlier occasion since there was no third person present at the time nor was any witness or third person present when negotiations for bribe of Rs.5000/- took place. No doubt the demand of Rs.5000/- was made some time in the first week of February 1988 when the accused is alleged to have gone to the office of the complainant and informed him that he had passed the two samples. There is nothing on record to show that at that time P.W. 3 Ms. Vaidya, an employee of the complainant or any other person was present in the office.

28. Two to three days after receipt of the cheque towards payment of the bulk supply by the complainant the accused telephoned him and told him that he had passed the material and he would come to collect the amount of Rs.1500/-. The complainant told him that he was short of funds and that he should collect the

amount 15 to 20 days thereafter. The accused then told the complainant that he was going out of station to his native place for 15 days and would telephone when he returned to Bombay. Thereafter on 24.5.1988 the accused telephoned the complainant at his office and told him that he would come to collect the amount of Rs.1500/-. The complainant told him that he did not have the money on that day and that the should contact him on 27.5.1988. The above conversations was on telephone and obviously there could be no corroboration of the same. As directed by the complainant on 27.5.88 the accused again contacted the office of the complainant at about 12 noon. The complainant was not in the office and therefore the telephone was taken by P.W. 3 Ms. Vaidya. The accused informed her that he was Suryavanshi and that he wanted to talk to Mr. Bhaleria P.W. 1. Ms. Vaidya then told the accused that the Bhaleria was not in the office and that he should telephone at 4 p.m. When the complainant Bhaleria came the office at about 1 p.m. Ms. Vaidya informed him about the telephone call from accused Suryavanshi. At about 4 p.m., the accused again

called the complainant and talked directly with him and stated that he would come to collect Rs.1500/-. The complainant asked him to reconsider his demand but the accused refused to reconsider his demand. Hence the complainant told him to come on the next day i.e. on 28.5.1988 to collect the bribe amount. On the same day the complainant went to ACB office and lodged his complaint of demand of bribe by the accused, pursuant to which the trap was laid and the accused was apprehended with the trap money.

29. The events leading to the trap, more specifically the demand of Rs.5000/- which was subsequently scaled down to Rs.1500/-, have been proved by the testimony of the complainant and partly corroborated by P.W. 3 Ms. Vaidya the employee of P.W.1, who has testified to the telephone calls made by the accused to the office at 12 noon when the complainant was not present, and again at 4 p.m. when the complainant was present and talked to the accused. There is no reason to disbelieve the testimony of the complainant regarding the demand and

payment of RS.1500/- and the earlier demand and payment of Rs.150/-. The testimony of the complainant on this aspect has gone unchallenged and can be accepted without further corroboration especially in view of the fact that the accused was apprehended with the trap money at the office of the complainant. The trap itself was laid pursuant to the complaint made by the complainant P.W. 1 on 27.5.1988 on which day the accused was told by the complainant to come on the next day i.e. 28th on the pretext that he did not have the money on that day. The same afternoon the complainant lodged his complaint with ACB. On the day of the trap the complainant and the panch witness were seated in the complainant' soffice waiting the arrival of the accused. On the accused coming to the office and sitting on the chair opposite to the complainant and on the accused enquiring as to who the person sitting opposite Ms. Viadya was and on being informed that he was a friend, the accused proceeded to renew his demand for the bribe. The conversation which took place between the complainant and the accused which is re-produced in the

evidence of the complainant and also corroborated by the evidence of Ms. Vaidya P.W. 3 and panch witness clearly establishes the demand of Rs.1500/- by the accused as bribe for getting the supply of 11,000 oil proof papers passed and accepted by the BEST. It is also established that thereafter the complainant took out the marked currency notes from his shirt pocket and handed them over to the accused who accepted the same with his right hand and then placed them in his left hand, took out his hand kerchief from his right side pant pocket, and put it on the wad of notes which was in his left hand. It was only thereafter that the complainant got up on the pretext of ordering coffee and gave the pre-arranged signal to the raiding party in response to which the raiding party came and caught hold of both the hands of the accused and the accused dropped the currency notes and the hand kerchief on the floor. The necessary tests for anthracene powder with the use of ultra violet lamp were conducted. Bluish blow was seen on the tips of all fingers and thumb of the right hand and on all phallanges of all fingers and thumb and also on the palm of left hand of the

accused and also on the tip of the nose, mustaches, both eye brows and on the front portion of the neck of the accused. Bluish glow was also seen on the wad of currency notes and on the hand kerchief.

30. In this connection learned advocate for the appellant has referred to the following two aspects of the search which according to him disprove the theory of the prosecution case (1) that the accused after receiving the wad of currency notes and placing it in his left hand removed his hand kerchief from his right side pant pocket and placed it on the currency notes and (2) that bluish blow was seen on the face , eye brows and the neck of the accused. It is pointed out that no bluish glow was seen either in the right side pant pocket or at the entrance of the pant pocket from which the accused is said to have taken out his handkerchief. It is contended that had the accused done so, the anthracene powder on the hands and fingers of the accused would have come on to the pant pocket of the accused and bluish glow would have been seen on the right hand side pant

pocket, which in this case did not happen. Secondly, so far as the bluish glow on the face, nose, neck etc. of the accused is concerned, it is pointed out that none of the witnesses examined have explained how anthracene powder could have come on the face, nose, neck etc., of the accused. It is not the case of the prosecution that the accused touched his face with his hands at the time of receiving the trap money prior to being apprehended by the police. It is the contention of the learned advocate for the accused that the fact that bluish glow was seen on the face, nose and neck of the accused confirms the defence case that when the complainant attempted to hand over the trap money to the accused, the accused refused to accept it but the complainant tried to thrust the money onto accused and in the process pushed the accused with his hands, as a result of which anthracene powder which was on the hands of the complainant came onto the face, neck nose etc., of the accused. None of the witnesses examined has thrown any light as to how anthracene powder came on to the face of the accused. Relying on the decision of this court in the case of *Nanji*

Ramchodas Tawadia vs. *The State of Maharashtra* reported in 1994 B.C. R. 238 it is submitted that the evidence of presence of anthracene powder on the face, neck etc. of the accused which have been established by scientific test must prevail over the ocular evidence and therefore the defence of the accused that the currency notes – (trap money) was sought to be thrust on the accused must be accepted and the ocular evidence of accused demanding and accepting the bribe amount rejected. Further it is submitted by Ld. Advocate for the accused, that absence of anthracene powder on the pant pocket of the accused which has also been established by scientific test disproves the prosecution case that the accused accepted the notes with his right hand and transferred it to his left hand and then took out his hand kerchief from his right side pant pocket and placed it on the trap money. Hence, this evidence of absence of anthracene powder which has been established by scientific test must prevail over the ocular evidence of accepting of the trap amount by the accused.

31.This court in the case cited above has observed as follows:

> “The use of anthracene powder and its effects lies in the domain of scientific tests and not scientific opinion. Anthracene powder is used for effecting raids in corruption cases as it gives a positive proof in respect of the passing of the money to the accused. The presence of the stains of anthracene powder gives rise to a positive finding of the currency notes having passed hands. Similarly, he absence of anthracene powder negatives the passing of currency notes to the accused. The test in respect of anthracene powder is a positive scientific test. The findings in respect of anthracene powder do not lie in the domain of scientific opinion. In case there is a conflict between ocular evidence and medical or scientific opinion, it is always possible to rely on occular evidence in preference to medical

> opinion, if the circumstances of a case so demands. That, however, is not the case in respect of scientific test. Scientific test is exact and leaves no scope for ambiguity. Hence, though occular evidence can be preferred and relied upon in case there is a divergence between the ocular evidence and scientific opinion, the same would not be the position in respect of scientific tests. If, as per the ocular evidence the currency notes did pass hands and were deposited in the pocket and if the anthracene test shows absence of traces of anthracene powder on the pocket, the inside of the pocket, as also on the articles found in the pocket, it is the anthracene powder test which will prevail over the ocular evidence."

32. It has been submitted that since both the hands of the accused has come in contact with the trap amount and since the

accused took the bribe money with his right hand and placed it in his left hand and thereafter removed his hand kerchief from his right side pant pocket and placed it on the currency notes the inside of the pant pocket, and to some extent the entrance of the pant pocket ought to have been stained with anthracene powder. This did not happen in the present case. No doubt, the absence of the anthracene powder on the pant pocket does create some doubt whether the accused had put his hand into his pocket to remove his hand kerchief but that does not rule out the accused having removed the hand kerchief from his pant pocket. It is possible that the hand kerchief of the accused was at the mouth of the pocket and not deep down inside the pocket. Admittedly, anthracene powder was only on the tips of the fingers, phallanges, thumb and the palm of the accused and not on the dorsal aspect of his fingers. There are two possibilities; one, if the kerchief was close to the entry of the pocket the same could have been removed by the accused without having to put his hand deep into his pocket, and second, even if he had put his hand into the pocket to remove the hand kerchief since

no anthracene powder was on the dorsal aspect of his fingers, the accused could have removed his handkerchief without the inside of his hand touching the pocket and transferring anthracene powder either inside or at mouth of the pant pocket . Thus, the prosecution story that the accused put his right hand in to his right side pant pocket and removed his hand kerchief does not get demolished only because no traces of anthracene powder were found on the fringe or inside the pant pocket of the accused.

33. In connection with the submissions of the Ld. Advocate for the accused regarding anthracene powder being found on the nose, mustaches, both eye brows and on the front portion of the neck of the accused, it must be noted that, the ocular evidence of the complainant P.W. 1, panch P.W. 2 and Ms. Vaidya P.W.3 , the employee of the complainant stand unshaken. Moreover there is absolutely no divergence between them as to the sequence of events right from the moment the accused came into the office of the complainant till the moment the pre-arranged signal was

given by the complainant and the raiding party arrived. The unexplained presence of anthracene powder on the nose, mustaches, both eye brows etc., of the accused by itself cannot destroy the ocular evidence of the three witnesses above. No doubt none of these witnesses have stated or explained as to how anthracene powder came to be found on the nose, mustaches, both eye brows etc., of the accused. But that does not rule out the possibility of the accused having himself touched his hand smeared with anthracene to his face, the moment he realized that he was subject of the trap. It would be a natural re-action for the accused to have put his hands to his face in sheer desperation the moment he realized that he has been trapped. The witnesses cannot be expected to have deposed about every single action or reaction of the accused at the time of the trap.

34. The defence of the accused is that the complainant while attempting to hand over the trap money to the accused, who declined to accept the money, pushed the currency notes

towards the accused with force. The exact defence of the accused is to be found in his answer to question No. 114 of his statement u/s 313 of Cr.P.C. The relevant portion is as follows:

> "..... He changed the subject and started talking about helping one another. '*Dono ke bhalai ke liye hai*' (The true translation of this would be 'It was in the interest of both of us'). He then took out wad of currency notes and offered the same to me. I immediately refused it. He again pushed the notes across the table and offered me. I again refused. Then I withdrew. Then I abused him for this attempt. I got up to go out. In the meantime Mr. Bhaleria came out by the side of the table and stood in between myself and door. He then forced me back towards the stool pushing me by my face and neck with his two hands. I was about to fall down but I controlled the balance. He then removed his handkerchief, wiped the table top and threw the

currency notes and the handkerchief on the ground."

35. The accused in his statement had also taken up the defence that he went to the office of the complainant on the trap day at the instance of complainant. In his 313 statement the accused has stated as follows :

"On 28.5.88 I was in HMKP office as usual. At about 5 p.m. there was a telephone call. The call was taken by Mr. Salvi an office bearer of HMKP. He gave me the call saying that it was for me. I took the call and caller introduced himself as proprietor of D.R. Traders, Bhaleria, he further said he was supplying oil proof papers to BEST and he knew Mr. Khilnani of BEST stores who was his close friend. He further told me that he had purchased a testing machine and Mr. Khilnani had advised him to request me (to contact Suryawanshi) to

demonstrate the same to know the operation. Mr. Bhaleria requested me to come to his office on 2nd floor in the Southern Wing. I immediately went there. After seeing me he asked me to sit down. He further asked me whether I was Suryawanshi. I said 'Yes'. Then I asked him about the machine. There was no machine."

36. The accused has in support of his defence examined defence witness D.W. 1 Shankar Manaji Salvi, the Secretary of Hind Majdoor Kisan Panchayat (H.M.K.P.). However, the testimony of D.W.1 only shows that there was a call for the accused when the accused was with him in his office at the relevant time. However, the testimony of D.W.1 is of no assistance to the defense case. There is no reason why the complainant would want to purchase any machine for oil testing since the oil testing was to be done by the BEST. It is therefore difficult to accept that the complainant purchased the so called oil testing machine, and consequently the question of the accused being

called by the complainant to demonstrate the working of such machine does not arise. Admittedly, when the accused went to the office of complainant there was no machine. The accused in his 313 statement seems to suggest that although he did not know the complainant he immediately left the office of the H.M.P.K. and went to the complainant''s office only because the Khilnani had asked the complainant to contact him. Accused does not state that Khilnani had talked to him earlier and told him about any oil testing machine purchased by the complainant which he was required to check. Clearly the story put up by the accused is a pure figment of his imagination.

37. The accused had admittedly gone to the office of the complainant where the alleged transaction took place. The defence of the accused that he had gone there at the instance of the complainant to demonstrate the working of the oil testing machine is patently false. The absence of anthracene on or inside the front pocket of the accused and presence of anthracene powder on the face and neck of the accused do not per se demolish the prosecution case of demand and

acceptance of the bribe amount by the accused Ms.Vidya P.W.3 has testified that the accused had telephoned the complainant on 27/5/88, a day prior to the trap, at about 12noon when the complainant was not in the office. She has testified to the visit of the accused to the said office on 28/5/88 and to the entire sequence of events leading to the trap. The pre-trap and post trap events of 28/5/88 have also been testified to by P.W.2 panch Majgaonkar.

38. The accused earlier has had similar dealings with the complainant where the amounts demanded and accepted were comparatively smaller. It is the submission of Ld. Adv. For the accused that the demand and acceptance of Rs.1500/- as bribe or illegal gratification for doing on omitting to do an official act cannot be believed as the accused, a mere minion in the department of the BEST, was not in a positive to show favour of disfavour to the complainant and, in any event, the job of the complainant had already been done; the samples were approved, the bulk supplies passed and accepted and payment

for the same received. Therefore there was no compulsion or obligation on the complainant for paying the bribe amount. Hence, even if it is taken as proved that the amount was demanded and accepted by the accused, it cannot be said that the same was as a motive or reward for doing / not doing an official act.

39. In this connection it would be appropriate to refer to the Judgment of the Apex Court in the case reported in **AIR 2004 SC 2042 (State of Andhra Pradesh Vs. Uma Maheswara)** wherein the Apex Court while dealing with the question of presumption u/s 20 of the Prevention of Corruption Act has observed as follows:-

> "The only condition for drawing such a legal presumption under Section 20 is that during trial it should be proved that the accused has accepted or agreed to accept any gratification. The Section does not say that the said condition should be satisfied through direct evidence. Its

only requirement is that it must be proved that the accused has accepted or agreed to accept gratification. Direct evidence is one of the modes through which a fact can be proved. But that is not the only mode envisaged in the Evidence Act. Proof of the fact depends upon the degree of probability of its having existed. The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him. In reaching the conclusion the Court can use the process of inferences to be drawn from facts produced or proved. Such inferences are akin to presumptions in law. Law gives absolute discretion to the Court to presume the existence of any fact which it thinks likely to have happened. In that process the Court may have regard to common course of natural events, human conduct, public or private business vis-

a-vis the facts of the particular case. The discretion is clearly envisaged in Section 114 of the Evidence Act."

40. All the three witnesses viz., the complainant P.W.1 panch witness P.W. 2 and P.W. 3 Ms. Vaidya, have deposed to the events that have happened in the office of the complainant. The accused had earlier made calls to the complainant. The accused had also telephoned the complainant on 27th, informing him that he would come to the office of the complainant when the complainant told him that he should come on the next day. The complainant the same evening lodged his complaint with the ACB and the entire trap was arranged pursuant to the complaint. It is not as though there was no trap. The accused has not denied that he was trapped by the ACB in the office of the complainant. Pre-trap and post trap panchanama are on record as Exh.36 and Exh.37. The accused had gone to the office of the complainant pursuant to being called by the complainant on the 28th. In view of the admission of these

incriminating circumstances by the accused and the testimony of the eye witness which has not been dislodged, the trial Court has rightly found the accused guilty of the offence of having demanded and accepted the bribe as a reward or motive for doing or not doing an official act. I find no infirmity or illegality or perversity in the order of the trial court and hence see no reason to interfere with the same. The appeal is therefore dismissed and accordingly disposed of. Accused to surrender within 8 weeks. His bail bonds to stand cancelled.

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